

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35993/35994

STATE OF IDAHO,)	2009 Unpublished Opinion No. 579
)	
Plaintiff-Respondent,)	Filed: August 20, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JENNIFER MARIE BROWN,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. David C. Nye, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed; judgment of conviction and concurrent unified sentence of five years, with one and one-half years determinate, for criminal possession of a financial transaction card, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, PERRY, Judge
and GUTIERREZ, Judge

PER CURIAM

This appeal involves two cases which were consolidated for purposes of appeal. In docket number 35993, Jennifer Marie Brown was charged with five counts of forgery and pursuant to a plea agreement, pled guilty to one count of forgery, I.C. § 18-3601. The district court sentenced Brown to a unified term of five years, with two years determinate and retained jurisdiction. After Brown completed her rider, the district court suspended the sentence and placed Brown on probation for five years. Brown subsequently violated the terms of her probation by committing new crimes. Brown was charged with three counts of criminal possession of a financial transaction card in docket number 35994, and pursuant to a plea

agreement, pled guilty to one count of criminal possession of a financial transaction card, I.C. § 18-3125(2). The district court sentenced Brown to a unified term of five years, with one and one-half years determinate and ordered the sentence to run concurrently with the sentence in docket number 35993. Brown appeals from the revocation of her probation in docket number 35993, contending that the district court abused its discretion by failing to *sua sponte* reduce her sentence upon revoking her probation. Brown also appeals from her judgment of conviction and sentence in docket number 35994, contending that the district court abused its discretion by imposing an excessive sentence.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007). The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was imposed. Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007); *State v. Adams*, 115 Idaho 1053, 1055, 722 P.2d 260, 262 (Ct. App. 1989); *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in ordering execution of Brown's original sentence without modification in docket number 35993 or in imposing sentence in docket number 35994. Therefore, the order revoking probation and directing execution of Brown's previously

suspended sentence in docket number 35993 is affirmed, as is the judgment of conviction and sentence in docket number 35994.